TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1414.

WAN SHING, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 14, 1890.

United States v. *Jung Ah Lung* (124 U. S., 621);
The Chinese Exclusion Case (130 U. S., 581).

Here comes Quock Ting, claiming that he was born in San Francisco, and that he lived there during the first 10 years of his life. He comes into port on a China ship, appears on inspection to be a Chinaman, can not count English, can not speak and does not know a single word of that language, knows no locality in the city of his alleged birth, knows no person there excepting his father, and is not shown to be recognized by any other person in America.

The petitioner comes into court with the burden of proof, and with the inferences of fact, and the presumptions of law against him.

The judge who heard the testimony in the court below, and observed manner, appearance, and demeanor of the two witnesses, disbelieves them and remands the petitioner.

It is a decision that this appellant is not constituted an American citizen by testifying through an interpreter that he is one.

It is respectfully submitted that the order and judgment remanding the appellant should be affirmed.

A. X. PARKER,
Assistant Attorney-General.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 3, 1891.

1 *Petition.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of WAN SHING, Merchant, on *Habeas Corpus.*

To the hon. judge of the circuit court of the United States, northern district of California:

The petition of Jack Tin respectfully shows—

That Wan Shing is unlawfully imprisoned, detained, confined, and restrained of his liberty by Captain Smith, master of the steamship Arabic, in the city and county of San Francisco, State of California, northern district of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by said master that said detained person is a subject of the Emperor of China, and must not and cannot be allowed to land under the provisions of the act of Congress of May 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the act amendatory thereof and supplemental thereto.

That said detained person does not come within the restrictions of said acts, but, on the contrary, your petitioner alleges that said detained person was a resident of the United States on November 17th, 1880, and departed therefrom prior to June 6th, 1882, resided in the United States on the 17th day of November, 1880, and departed therefrom prior to the 6th day of June, 1882, and at all the times herein mentioned was and is a merchant doing business at No. 1012 Dupont St., city and county of San Francisco, and who temporarily departed therefrom on the 19th day of April, 1882, steamer Belgic; that deponent is informed and believes that said detained person has been examined by the custom-house authorities and his permission to land denied.

That your petitioner makes this petition on behalf of said detained person.

Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, direct to the said master, commanding him to have the body of said detained person before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention and said writ, and that he may be restored to his liberty.

Dated on the 10th day of August, 1889.

JACK [Chinese Signature] TIN, *Petitioner.*

STATE OF CALIFORNIA,
City and County of San Francisco, Northern District of California, United States of America, } ss:

Jack Tin, being duly sworn, says that he is the petitioner above named, and that he has heard read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge; that he lives at No. 1012 Dupont St., member of the firm Quan Chung Tai & Co.

JACK [Chinese Signature] TIN,
1012 *Dupont Street.*

Sworn to before me this 10th day of August, 1889.
F. D. MONCKTON,
Commissioner Circuit Court.

2 Endorsed: No. 10465. Circuit court of the United States, northern district of California. *In re* Wan Shing, merchant, on *habeas corpus.* S. S. ticket No. —. Petition and order for writ. Filed August 10, 1889. L. S. B. Sawyer, clerk, by —— ——, deputy clerk. Gaston Strauss, attorney for petitioner.

Let the writ of *habeas corpus* issue pursuant to the prayer of the petition, returnable on or before August 12, 1889, or, in case the steamer on which said petitioner is detained has not cleared on that day, as soon as practicable after clearance, but before the departure of the steamer, and when the within-named petitioner is produced let him be admitted to bail in the sum of $1,500, and the matter referred to S. C. Houghton, Esquire, commissioner, etc., as referee to take proofs and report findings and recommend the proper judgment as prescribed in general order of this court in like cases entered July 9, 1888.

SAWYER, *Judge.*

3 *Marshal's Return to Writ.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of WAN SHING on *Habeas Corpus.*

The President of the United States of America to Captain Smith, master of the steamship Arabic, Greeting:

You are hereby commanded that you have the body of Wan Shing, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on or before the 12 day of August, 1889,

or in case the steamer on which said petitioner is detained has not cleared on that day, as soon as practicable after clearance, but before the departure of the steamer, to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, this 10th day of August, A. D. 1889.

L. S. B. SAWYER, *Clerk*,
By —— ——, *Deputy Clerk.*

4 Endorsed: No. 10465. Circuit court of the United States, northern district of California. In the matter of Wan Shing on *habeas corpus*. S. S. ticket No. —. Marshal's return of service of writ of *habeas corpus*. Filed on return this 12 day of Aug., 1889. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify the foregoing to be a true copy of the writ of *habeas corpus* issued in the within-entitled matter.

[SEAL.] Attest my hand and seal of said circuit court this 10th day of August, A. D. 1889.

L. S. B. SAWYER, *Clerk*,
By —— ——, *Deputy Clerk.*

Marshal's Return to Writ.

I hereby certify that on the 10th day of August, 1889, I received the writ of which the within is a copy, and that on the 10th day of August, 1889, at San Francisco, in this district, I personally served the said writ by delivering to and leaving the same with Capt. Smith, master S. S. "Arabic."

Dated San Francisco, Cal., August 12th, 1889.

J. C. FRANKS,
U. S. Marshal,
By JAMES R. DEANE,
Deputy Marshal.

5 *Writ of Habeas Corpus.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of WAN SHING on *Habeas Corpus.*

The President of the United States of America to Captain Smith, master of the steamship Arabic, Greeting:

You are hereby commanded that you have the body of Wan Shing, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the

circuit court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on or before the 12th day of August, 1889, or in case the steamer on which said petitioner is detained has not cleared on that day, as soon as practicable after clearance, but before the departure of the steamer, to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the Supreme Court of the United States, this 10th day of August, A. D. 1889.

L. S. B. SAWYER, *Clerk*,
By —— ——, *Deputy Clerk.*

6 Endorsed: No. 10465. Circuit court of the United States, northern district of California. In the matter of Wan Shing on *habeas corpus*. S. S. ticket No. 41. Writ of *habeas corpus* and return thereto. Filed on return this 12th day of August, 1889. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

In obedience to the within writ, I hereby produce the body of Wan Shing as within directed, and return that I hold said person in my custody by direction of the customs authorities of the port of San Francisco, California, under the provisions of the Chinese restriction act.

W. THOMAS, *Mate*,
Pr. Captain Steamship Arabic.

San Francisco, August 10th, 1889.

7 *Commissioner's Report. Testimony.*

In the Circuit Court of the United States in and for Ninth Circuit, Northern District of California.

The Hon. S. C. Houghton, commissioner.

In the Matter of the *Habeas Corpus* of WAN SHING. No. 10465.

SATURDAY, *February* 8, 1890.

Wan Shing, the petitioner, sworn.

Mr. STRAUSS:

Q. When did you first come to this country?
A. I first came to this country in Kwong Sue 6th year (1880).
Q. When did you go to China?
A. I went to China Kwong Sue 8th year, 3rd month, 3rd day (April 19, 1882).
Q. By what steamer?
A. The Belgic.

The COMMISSIONER: The Belgic sailed that day.

Mr. STRAUSS:

Q. When did you return?
A. I returned to the United States last year, 7th month, 12th day. (August 7, 1889.)
Q. By what steamer?
A. The Arabic.

8 Cross-examination.

Mr. WELLER:

Q. What do you do here?
A. I learn the business.
Q. Whereabouts?
A. Quong Lung Tai.
Q. What did you do there?
A. I just learn the business. It was a drygoods store.
Q. Did you have any money when you came here?
A. No, sir.
Q. Where is your father and mother?
A. My father had business at Quong Lung Tai's store.
Q. Where is he now?
A. He is in the store of Quong Lung Tai. Now he has gone up the country.
Q. When did he go up the country?
A. About this year, the first two or three days.
Q. How much is your father's interest in this store?
A. $1,000.
Q. Did you get any share when you were here before?
A. No, sir.
Q. Have you got any interest in the store?
A. My father has it.

The COMMISSIONER:

Q. Have you any interest?
A. My father has it, but I do not.

Mr. WELLER:

Q. When did you first come to this country?
A. Kwong Sue 6th year (1880).
Q. What month?
A. 10th month (November, 1880).
Q. What work did you do in the store?
A. Help the book-keeper write the bills, and make the bills sometimes in Chinese.

9 Q. Did you not get anything for that?
A. No, sir.

Q. Were you examined on board of the ship when you arrived here?
A. They examined me in English, but I did not understand very well.
Q. Did they not talk to you in Chinese?

A. Yes, sir; Ah Dock did.
Q. Did they not ask you in Chinese?
A. They asked me in English and Chinese both.
Q. Did you not tell them you had an interest of $1,000 in this store?
A. I told them my father had $1,000 in Quong Lung Tai's store.
Q. Did you not say that you had it?
A. No, sir.
Q. Did you not say that you first came in here Kwong Sue 4th year (1878)?
A. I do not remember.
Q. What year did you come?
A. Kwong Sue 6th year.
Q. What did you come here for?
A. I came here to stay in the store of Quong Lung Tai, and learn the business.
Q. What did you go home for?
A. The climate did not suit me so I had to go home.
Q. Do you think the climate will suit you any better this time than it did before?
A. It might change some time.
Q. Did you take any money home with you?
A. My father gave me two hundred Mexican dollars.
Q. He gave it to you?
A. Yes, sir.
Q. How old were you then, when you went away?
A. 18 years old.

TOY JOCK TIN, called for the petitioner. Sworn.

Mr. STRAUSS:

Q. Where do you live?
A. 1012 Dupont street.
Q. Do you know this petitioner, Wan Shing?
A. Yes, sir; he is my partner's son.
Q. What is he doing here?
A. First his father call him over to stay with him and learn the business. At first he thought he would turn the business over to him. Then he was sick and his father sent him home. His father sent him home Kwong Sue 8th year, 3rd month, by steamer Belgic, and when he arrived in China he sent a letter and told his father he had got a big boil on his head, and he was sick for a few years. Now, if he gets through the courts his father wants to turn the business over to him, and his father wants to go home so he send for him over this time again.

Mr. STRAUSS: That is the case.

The COMMISSIONER: I will recommend his remand. I do not see that he ever came within the class excepted from the provisions of the exclusion act.

Mr. STRAUSS: I take an exception.

11 *Commissioner's Report.* (*Statement.*)

SAN FRANCISCO, *August 8th*, 1889.

Kind of Certificate or Paper, Guarantee Letter.

S. F. Ticket, No. 41.

Name of passenger, Wun Sin; sex, male; age, 26.
Where born, China.
Ever in U. S., yes; place of former residence in U. S., San Francisco.
Date of departure from U. S., April 19th, 1882.
Name of vessel departed on, Belgic.
Former occupation in U. S., book-keeper.
Am't dues paid, $5.00; name of Co., Som Yum Co.
Am't sent to China, $700.00; by what firm, on my person.
Street and number, —— ——.
Do you speak English, no; destination, San Francisco.
Place of stopping in the city, Quan Lung Tai & Co., #1012 Dupont St.
Who bought your ticket to China, Choy Jock Tean.
With whom connected, Quan Lung Tai & Co., #1012 Dupont St.
When did you first arrive in U. S? 1878.
I have lived in this city four years, during which time I worked as book-keeper for the firm of Quan Lung Tai & Co., #1012 Dupont St. I have $1,000.00 interest in the above firm. I only saw one Chinese Joss House in this city. I never saw a gambling house. I do not know where Kearney St. is, nor where Stout alley is. I do not know where Spofford alley nor Baker alley is. I did not apply for a custom-house certificate on my departure to China.

(Chinese Sig.)

C. RICKARDS,
U. S. Inspector.

12 *Commissioner's Report.*

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of WAN SHING on *Habeas Corpus.* No. 10465.

Before S. C. Houghton, commissioner.

Pursuant to the order of the above-named court, duly made and entered herein, pursuant to the order of said court, duly made and entered on the 9th day of July, A. D. 1888, referring the above-entitled matter to the undersigned, a commissioner of said court, with instructions to find the facts and his conclusions of law and to report a judgment therein, the said matter having been regularly

brought on for hearing, and the same having been duly heard and submitted, and due consideration having been thereon had, I, the said commissioner, do find as follows:

That the above-named petitioner is a subject of the Empire of China.

That said petitioner has not by sufficient evidence established his right to re-enter and remain in the United States in accordance with the treaties and laws of the United States.

I do therefore report that, in my opinion, judgment should be entered herein.

That said petitioner was not at the date of the petition herein illegally restrained of his liberty as therein alleged.

That said petitioner came to the United States from China by the steamship Arabic on the 7th day of August, A. D. 1889.

And I do further report that, in my opinion, the said petitioner should be returned by the United States marshal for the northern district of California to the custody whence he was taken, to wit, on board the said steamship to the custody of the master thereof for the purpose of deporting him out of the United States, and transporting him to the port whence he came; and that the said marshal should take the said petitioner into custody and him safely keep till said order shall be fully executed.

No exceptions were taken to the above report by the petitioner or by the United States.

S. C. HOUGHTON,
Commissioner U. S. Circuit Court, Northern District of California.

The above report of the commissioner is confirmed and judgment is ordered to be entered in accordance therewith.

SAWYER, *Circuit Judge.*

13 Endorsed: Exception by petitioner. No. 10465. Circuit court of the United States, northern district of California. In the matter of Wan Shing on *habeas corpus.* Commissioner's report. Filed Feb. 8, 1890. L. S. B. Sawyer, clerk U. S. circuit court, northern dist. of California, by —— ——, deputy clerk.

14 *Judgment of Remand.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of WAN SHING on *Habeas Corpus.* No. 10465.

This matter having been regularly brought on for hearing before the court and the judge thereof, the United States attorney having appeared and intervened on behalf of the United States, and the same having been duly heard and submitted and due consideration thereon had, it is by the court now here considered—

That Wan Shing, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of the petition herein illegally restrained of his liberty as therein alleged.

It is further adjudged and found that he came from China by the steamship Arabic, and is a Chinese person forbidden by law to land within the United States, and has no right to be or remain therein.

It is therefore ordered that the said Wan Shing be remanded by the United States marshal for the northern district of California to the custody whence he was taken, to wit, on board the said steamship, to the custody of the master of said steamship, or, in case of a change of master, to the custody of the master thereof, whoever he may be at the time of this order of remand, or to place him in the hands and charge of any party on board said steamship for the time being representing the master or then in charge of said steamship in the absence of the master, or for the time being exercising control or authority thereon; this order to be executed as to said steamship whether still in port, not having departed therefrom or having departed and returned since the proceedings herein were instituted; and in case said steamship has departed and not returned, or for any other reason the said Wan Shing cannot be placed on said steamship, that the said marshal place him upon any other vessel available for the purpose, paying the necessary passage money, for the purpose of deporting him out of the United States and transporting him to the port whence he came; and for the purpose of carrying his order into effect it is further ordered that the said marshal take the said Wan Shing into custody and him safely keep till said order shall be fully executed.

Entered this 17th day of February, 1890.

L. S. B. SAWYER, *Clerk.*

15 Endorsed: No. 10465 United States circuit court for the northern district of California. *In re* Wan Shing on *habeas corpus.* Certified copy. Judgment of remand. Filed Feb. 17 1890. L. S. B. Sawyer, clerk, by —— ——, deputy clerk. Entered in judgment register No. —, p. —. Delivered two certified copies and photo. to marshal.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original judgment of remand entered in said court in the within-entitled matter.

Attest my hand and seal of said circuit court this 17th day of February, A. D. 1890.

[SEAL.]

L. S. B. SAWYER, *Clerk,*
By —— ——,
Deputy Clerk.

16 *Certificate to Judgment-Roll.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the therein-entitled matter.

[SEAL.] Attest my hand and the seal of said circuit court this 17th day of February, 1890.

L. S. B. SAWYER, *Clerk.*

Endorsed: Judgment-roll. Filed February 17th, 1890. L. S. B. Sawyer, clerk.

17 *Bond on Appeal.*

UNITED STATES OF AMERICA, } ss:
Northern District of California, }

Be it remembered that on this 10th day of March, 1890, before the undersigned, a commissioner duly appointed by the circuit court of the United States, northern district of California, to take acknowledgment of bail and affidavits, etc., personally appeared Wan Shing, as principal, and Jack Tin, of the firm of Hang On Tai & Co., No. 635 Clay street, and Chan Chung, of the firm of Kwong Ket Thung & Co., No. 610 Jackson street, as sureties, and acknowledged themselves to owe and be indebted to the United States of America as follows—that is to say, in the sum of three thousand dollars each, to be levied of their goods and chattels, lands and tenements, and the United States rendered, if default be made, in the conditions following:

The conditions of this recognizance are such that whereas one Wan Shing has been produced before the circuit court of the United States in and for the northern district of California, upon a writ of *habeas corpus*, duly sued out of said court upon petition, and has been been duly admitted to bail by said court, pending of an appeal from the order & judgment of remand heretofore entered by said circuit court to the Supreme Court of the United States, in the sum of three hundred dollars:

Now, therefore, if the said Wan Ching shall personally appear before the said circuit court of the United States in and for the northern district of California, at the court-room thereof, at San Francisco, California, as he may from time to time be by said court required to appear and render himself amenable to any and all lawful orders and process of said court, and not depart the said court without leave first obtained, and abide by the final order of said court in said matter to be made and entered, and answer all costs in the premises, then this recognizance shall be void; otherwise to remain in full effect and virtue.

WAN [Chinese sig.] SHING. [SEAL.]
JACK [Chinese sig.] TIN. [SEAL.]
CHAN [Chinese sig.] CHUNG. [SEAL.]

Acknowledged before me the day and year first above written.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

UNITED STATES OF AMERICA, } ss:
Northern District of California, }

Jack Tin and Chan Chung, being duly sworn, each for himself deposes and says that he is a householder in said district, and is worth the sum of three thousand dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

JACK [Chinese sig.] TIN.
CHAN [Chinese sig.] CHUNG.

Sworn to before me this 10th day of March, A. D. 1890.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

18 Endorsed: No. 10465. Circuit court of the United States, northern district of California. In the matter of Wan Shing on *habeas corpus.* Bond to appear pending appeal to Supreme Court of United States. Filed March 11, 1890. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

I hereby certify that I personally know the sureties on the within bond; that I believe the persons signing are the persons described in and who purport to sign the bond, and that I believe them to be amply worth the penalty thereof, exclusive of property exempt from execution and over and above all just debts and liabilities.

GASTON STRAUS,
Attorney for Petitioner.

The form of the within bond and the sufficiency of the sureties thereon are hereby approved.

CHARLES L. WELLER,
Ass't United States Attorney.
LORENZO SAWYER,
Circuit Judge.

19 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of WAN SHING on *Habeas Corpus.* No. 10465.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing eighteen written and printed pages, numbered from 1 to 18, inclusive, to be a full, true, and correct copy of the record and of all the proceedings in the above and therein entitled matter, and that the same together constitute the transcript on appeal to the Supreme Court of the United States.

Seal U. S. Circuit Court, Northern Dist. Cal.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 25th day of September, A. D. 1890.

L. S. B. SAWYER,
Clerk U. S. Circuit Court, Northern District of California.

20 UNITED STATES OF AMERICA, *ss:*

To the United States of America and John T. Carey, Esqr., United States district attorney in and for the northern district of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 13th day of October, A. D. 1890, pursuant to an order allowing an appeal from the judgment of the circuit court of the United States in and for the northern district of California to the Supreme Court of the United States in the matter entitled *In re* Wan Shing and — you are defendant in error, to show cause, if any there be, why the judgment in the said matter mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, United States circuit judge, ninth judicial circuit, this tenth day of March, A. D. 1890, and of the Independence of the United States the one hundred and fourteenth.

SAWYER,
Circuit Judge.

21 [Endorsed:] R. 10465. In the Supreme Court of the United States. *In re* Wan Shing, *habeas corpus.* Citation. Filed March 10, 1890. L. S. B. Sawyer, clerk U. S. circuit court, nor. dist. Cal.

Service of the within by copy admitted this 15th day of March, A. D. 1890.

JOHN T. CAREY,
District Attorney.

Endorsed on cover: N. California C. C. U. S. No. 1414. Wan Shing, appellant, *vs.* The United States. Filed October 14, 1890.

20 UNITED STATES OF AMERICA, *ss:*

To the United States of America and John T. Carey, Esqr., United States district attorney in and for the northern district of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 15th day of October, A. D. 1890, pursuant to an order allowing an appeal from the judgment of the circuit court of the United States in and for the northern district of California to the Supreme Court of the United States in the matter entitled *In re* Wan Shing and — you are defendant in error, to show cause, if any there be, why the judgment in the said matter mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, United States circuit judge, ninth judicial circuit, this tenth day of March, A. D. 1890, and of the Independence of the United States the one hundred and fourteenth.

SAWYER,
Circuit Judge.

21 [Endorsed:] R. 10465. In the Supreme Court of the United States. *In re* Wan Shing, *habeas corpus.* Citation. Filed March 10, 1890. L. S. B. Sawyer, clerk U. S. circuit court, nor. dist. Cal.

Service of the within by copy admitted this 15th day of March, A. D. 1890.

JOHN T. CAREY,
District Attorney.

Endorsed on cover: N. California C. C. U. S. No. 1414. Wan Shing, appellant, *vs.* The United States. Filed October 14, 1890.

Office Supreme Court U. S.
FILED,
APR 20 1891
JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

WAN SHING, APPELLANT,
vs.
THE UNITED STATES. } No. 1414.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

WAN SHING, APPELLANT,
vs.
THE UNITED STATES. } No. 1414.

APPEAL FROM THE SUPREME COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLEE.

STATEMENT.

This appeal is from the circuit court of the United States for the northern district of California, and is one of the "Chinese exclusion cases," wherein the appellant is claimed to be beyond the scope of the restrictive legislation of Congress.

The petition is by one Jack Tin, and prays for a writ of habeas corpus, alleging that Wan Shing is unlawfully imprisoned, etc., by Captain Smith, master of the steamship *Arabic*, in San Francisco, in said district.

The alleged ground of the detention is charged to be that it is claimed that said Wan Shing is a subject of the Emperor of China, and must not and can not be allowed

to land under the provisions of the act of Congress of May 6, 1882, entitled "An act to execute, etc.," and the act amendatory thereof and supplemental thereto.

Said petition also alleges that said Wan Shing was a resident of the United States and resided therein, November 17, 1880, and departed therefrom prior to June 6, 1882, and was and is a merchant doing business at No. 1012 Dupont street, in said city of San Francisco, and temporarily departed therefrom April 19, 1882.

The writ was issued and served, and in obedience thereto the mate of the said steamship produced the said Wan Shing in said court August 10, 1889, and reported that he was held in custody by direction of the customs authorities of the port of San Francisco under the provisions of the Chinese restriction act.

The matter was duly referred by order of the court to Mr. S. C. Houghton, a commissioner of said circuit court, with instructions to find the facts and his conclusions of law, and to report a judgment therein. A hearing was had February 8, 1890, whereat said Wan Shing and one Toy Jock Tin were examined as witnesses. (Rec., pp. 4, 5, 6).

Thereupon said commissioner duly found (p. 8) that the said Wan Shing is a subject of the Empire of China; that he has not by sufficient evidence established his right to reënter and remain in the United States.

Said commissioner also reported that in his opinion judgment should be entered—that said Wan Shing was not at the date of the petition illegally restrained of his liberty; that he came to the United States from China by the steamship *Arabic*, August 7, 1889; and further re-

ported that said Wan Shing should be returned to custody for deportation out of the United States and for transportation to the port whence he came. No exceptions were taken to said report.

Said report was confirmed by the circuit judge.

February 17, 1890, the matter was brought on for a hearing before the court and a judge thereof, the United States attorney appeared and intervened on behalf of the United States, and said matter was duly heard and submitted, and the court thereupon adjudged: That Wan Shing was not at the date of said petition illegally restrained of his liberty as therein alleged.

It was further adjudged and found that he came from China by the steamship *Arabic*, and is a Chinese person forbidden by law to land within the United States, and has no right to be or remain therein.

Whereupon it was ordered that said Wan Shing be remanded to custody for deportation out of the United States and for transportation to the port whence he came.

And said Wan Shing awaits, upon bail, the result of this appeal.

I.

THE PETITIONER IS A LABORER UNDER THE STATUTE.

That the petitioner is a laborer under the statute, was decided by the customs examiner, by the commissioner, and by the circuit judge.

Assuming that he had been in the country previous to 1889, he had done nothing except to "help the bookkeeper with the bills, and make the bills sometimes in Chinese." (p. 5.)

If it be held that Chinamen who are ready to testify that they wish to learn business, and that they help the bookkeeper in making out bills in Chinese, are entitled to enter the country, or if such aliens are to be considered merchants, they may be expected by the shipload.

Wan Shing comes to the port of San Francisco from China.

When examined by the customs official, inspection indicates and examination proves him to be a Chinaman.

Under the laws applicable to him, the rule is exclusion; to enter the country he must come within an exception.

The burden of proof is upon him and the presumptions of the law are against him.

He must establish, by credible testimony, his right to go free in the country.

Failing so to do, he was properly remanded.

II.

AN EXAMINATION OF THE TESTIMONY SHOWS IT TO BE WHOLLY UNRELIABLE.

Wan Shing, as witness, says (fol. 7), that he first came to this country in 1880. In the statement made by him appearing on page 7, which appears to have been signed, he says he first arrived in the United States in 1878.

He says (fol. 9) that this examination on his arrival was in English and Chinese both, and he gives these suggestive answers:

Q. Did you not say that you first came here Kwong Sue 4th year (1878)?
A. I do not remember.
Q. What year did you come?
A. Kwong Sue, 6th year.

Again, the witness says that he went back to China April 19, 1882, and returned to the United States August 7, 1889 (fol. 7); that he was 18 years old when he went back to China, and 26 when he returned here (fol. 11).

The petition (p. 1) presents this 18 year-old boy as a *merchant*. The dates covered are from 1880 (when the petitioner was about 16 years old) to the date of the petition, August 10, 1889, and the allegation is that the detained person—

> At all the times herein mentioned *was and is a merchant*, doing business at No. 1012 Dupont street, city and county of San Francisco, and who temporarily departed therefrom, etc.

It is apparent that an attempt was made to bring in the appellant as a merchant under the law, as well as upon another theory.

It will be noticed that the appellant swears, in the first sentence of his testimony, and again, twice repeated, near the end of folio 8, that he first came to this country in 1880. He and Toy Jock Tin both testify that he went back to China in April, 1882.

In the statement on page 7, under the name of Wun Sin, the appellant says that he lived in the city 4 years, during which he worked as bookkeeper for Quan Lung Tai & Co., at No. 1012 Dupont street. How he remained in San Francisco 4 years between some day in November, 1880, and April 19, 1882, is not explained.

Again, he says: "I have $1,000 interest in the above firm." Here (August 8, 1889), he is masquerading as a merchant returning to his business.

When examined as a witness, February 8, 1890, he says (fol. 8) that his father's interest in the store is $1,000. He is asked:

Q. Did you get any share when you were here before?
A. No, sir.
Q. Have you got any interest in the store?
A. My father has it.

The COMMISSIONER:

Q. Have you any interest?
A. My father has it, but I do not.

He is asked if he did not state on his examination on arrival (fol. 9) that he had an interest of $1,000 in this store, and he answered:

A. I told them my father had $1,000 in Quong Lung Tai's store.
Q. Did you not say that you had it?
A. No, sir.

Toy Jock Tin is sworn as a supporting witness; says in substance that petitioner is his partner's son; that he came to learn the business, was sick, and went back in April, 1882; that the father wants to turn the business over to the son and go home himself.

This comprises the evidence.

The testimony of the appellant, though uncontradicted, is worthless under the decisions of the courts.

That of Toy Jock Tin is by an interested party, who calls no supporter, produces no record, gives no circumstances, and swears to nothing excepting that he assumes to give from memory one occurrence that he says took place more than seven years before.

It is submitted that the evidence appearing in the record proves nothing upon which a jury or a court is bound to rely.

The court below was justified in remanding the petitioner, and the testimony presented is not such as calls upon this court to reverse the judgment of the court below.

Counsel for the appellee begs leave to refer to the brief submitted herewith in Docket Case No. 638 (*Quock Ting* v. *The United States*) and to the cases cited under point B thereof as to the consideration to which the testimony in this case is entitled under the decisions of the courts.

III.

THE APPELLANT IS EXCLUDED FROM COMING INTO THE UNITED STATES BY THE ACT OF OCTOBER 1, 1888.

The act of October 1, 1888 (25 Stat., 504), is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passage of this act, it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.
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> SEC. 2. That no certificates of identity provided for in the fourth and fifth sections of the act to